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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,228	05/02/2001	Malcolm Gibson Hodgskiss		7403

7590 11/17/2003

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CANADA

EXAMINER

KILKENNY, TODD J

ART UNIT PAPER NUMBER

1733

DATE MAILED: 11/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

CLO 7

Advisory Action	Application No. 09/846,228	Applicant(s) HODGSKISS, MALCOLM GIBSON	
	Examiner Todd J. Kilkeny	Art Unit 1733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. ☒ The proposed amendment(s) will not be entered because:
 - (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

- 3. ☐ Applicant's reply has overcome the following rejection(s): _____.
- 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
- 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-6.

Claim(s) withdrawn from consideration: _____.

- 8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
- 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
- 10. ☐ Other: _____

Continuation of 2. NOTE:

The amendment to the specification has not been entered as the proposed paragraphs and corresponding Figure 6, provide a description to an embodiment having an alternate joint profile which provides the adhesive wood joinery with a continuous upper surface, which isn't supported by the original specification and as such is considered to raise the issue of new matter.

Likewise, the proposed amendment to claim 1, requiring "the individual wooden elements to contact each other such that the individual wooden elements together define a substantially continuous upper surface of said product" appears to raise new issues that would require further consideration. The limitation requiring the individual wooden elements to contact as presented by pending claim 4, in light of the original disclosure, was interpreted to define contacting the wooden elements through the adhesive, which is anticipated in the rejection of record to Brown (4,546,024). However, the proposed amendment to the specification (see proposed Figure 6) and the corresponding description of this alternate joint profile seems to suggest the individual wood elements directly contact each other at an upper region without adhesive provided therebetween. This proposed suggestion appears to raise new matter issues with claim 1 as to what "...contact each other such that the individual wooden elements together define a substantially continuous upper surface" defines.

Additionally, the amendment attempts to add nine new claims (7 – 15), while only cancelling one (4).

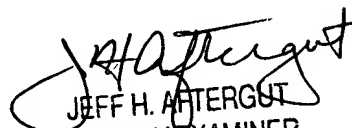
Therefore, the amendment will not be entered because (a) the amendment to the specification and drawings appears to incorporate new matter, (b) the amendment to claim 1 raises new issues, including new matter issues, and (c) 9 new claims are presented without cancelling a corresponding number of finally rejected claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd J. Kilkenny** whose telephone number is (703) 305-6386 or if attempting to contact after December 18, 2003 (571) 272-1219. The examiner can normally be reached on Mon - Fri (9 - 5).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

TJK

TJK


JEFF H. AFTERGUT
PRIMARY EXAMINER
GROUP 1300